

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HOBBY LOBBY STORES,

Plaintiff,

v.

DIRK D. OBBINK,

Defendant.

* * * * *

Case No. 21-CV-3113 (RPK)

Brooklyn, New York
June 30, 2022

TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT
BEFORE THE HONORABLE MARCIA M. HENRY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

MICHAEL JOSEPH McCULLOUGH, ESQ.
ANJU UCHIMA, ESQ.
Pearlstein & McCullough
641 Lexington Avenue
New York, NY 10022

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4 Research Drive, Suite 402
Shelton, Connecticut 06484 (203)929-9992

1 (Proceedings commenced 4:06 p.m.)

2 THE CLERK: Good afternoon. This is a civil cause
3 for motion hearing for case no. 21-CV-3113, Hobby Lobby
4 Stores, Inc. vs. Obbink.

5 As a reminder, pursuant to Local Civil Rule 1.8, the
6 parties may not independently record any court proceeding. A
7 transcript of these proceedings may be ordered from the
8 clerk's office.

9 That being said, counsels for plaintiff, please
10 state your appearance.

11 MR. MCCOLLOUGH: Good afternoon, Your Honor.
12 Michael McCollough, Pearlstein & McCollough, 641 Lexington
13 Avenue, 13th floor, New York, New York 10022.

14 Joining me is Anju Uchima, also from my firm.

15 THE COURT: Good afternoon to each of you.

16 MR. MCCOLLOUGH: Good afternoon.

17 THE COURT: Is there anyone else on the line?

18 THE CLERK: There's no appearance for the
19 defendants.

20 THE COURT: Okay. So that is everyone. And is it
21 Mr. Uchima or Ms. Uchima?

22 MR. MCCOLLOUGH: Mister, Your Honor.

23 THE COURT: Mr. Uchima. All right. Okay.

24 So this case is on for a status conference -- well,
25 it's a motion hearing really. And the complaint was filed

1 just about a year ago in June of 2021 and subsequently in
2 response to an order from Judge Kovner, proof of service was
3 filed in September of 2021.

4 In November of 2021 (indiscernible) from the
5 clerk's office and an entry of default was filed on November
6 30th of 2021 at document number 9. Then the motion for
7 default judgment was filed and Judge Kovner referred that to
8 me for a report and recommendation.

9 So in my scheduling order for this hearing I did
10 request additional information because the original filing did
11 not include a memorandum of law pursuant to Local Civil Rule
12 7.1(a)(2), nor did the application append a certificate of
13 default from the clerk's office or a copy of, in this case,
14 the complaint, which is the operative pleading to which the
15 defendant hasn't responded.

16 I did receive a supplement on June 20th at document
17 number 11 and it does contain a memorandum of law. It doesn't
18 appear to contain any of the other things that were missing
19 from the original filing.

20 So Mr. McCollough or Mr. -- is it Uchimo?

21 MR. UCHIMA: Uchima.

22 THE COURT: Uchima. Okay. Any explanation for
23 that?

24 MR. MCCOLLOUGH: I'm sorry, Your Honor. I could not
25 hear the last ten seconds of what you just said. Anju, were

1 you able to hear the judge?

2 MR. UCHIMA: I was able to hear the judge. She was
3 asking --

4 MR. McCOLLOUGH: Okay.

5 MR. UCHIMA: -- why we do not have a certificate of
6 default or a copy of the complaint annexed to the memorandum
7 of law that was filed on the 20th.

8 MR. McCOLLOUGH: That's because I mistakenly forgot
9 to put it on the memorandum of law. That's my fault. I
10 apologize, Your Honor.

11 THE COURT: All right.

12 Now as a practical matter, that alone could be
13 grounds to deny because you haven't complied with the local
14 rule. But I'm going to ask you to submit that as one
15 pleading, or one filing immediately after this conference.

16 MR. McCOLLOUGH: I will do that, Your Honor. Thank
17 you.

18 THE COURT: I shouldn't have to go flipping through
19 the docket to get papers to support your motion.

20 I have several questions. Regarding the
21 jurisdictional question -- hold on one second here.

22 All right. So in your memo you expounded on the
23 personal jurisdiction question, but none of this information
24 is included in the complaint.

25 So why don't you tell me why you believe that given

1 that it's not in the complaint you think that I can grant your
2 motion for a default?

3 MR. McCOLLOUGH: I -- let's see.

4 In the complaint -- let me look at our complaint.
5 In paragraph 7 we alleged that the court had jurisdiction over
6 Obbink because he transacted business in New York or because
7 he committed tortuous acts in New York.

8 So he generally alleged that he transacted business
9 in New York. I think our memorandum expands on that.

10 THE COURT: Right, but it's not pled. And New York
11 -- excuse me -- right. I guess what I'm trying to say here is
12 that it doesn't appear to be pled with any sort of
13 specificity. There don't seem to be specific facts in the
14 complaint as to why this court has jurisdiction.

15 So as I said, you expounded on that in your
16 memorandum of law but ultimately we're talking about the
17 complaint. We're talking about whether or not as a matter of
18 law you have pled in your complaint facts sufficient to
19 support jurisdiction.

20 MR. McCOLLOUGH: Okay.

21 THE COURT: So I --

22 MR. McCOLLOUGH: Your Honor, may I do note that --

23 THE COURT: Sure.

24 MR. McCOLLOUGH: I'm sorry. Go ahead.

25 THE COURT: Go ahead.

1 MR. McCOLLOUGH: I was just going to say that I do
2 note that in your June 2nd quarter you did give us the option
3 of sending you a letter to opt, I guess is the right word, to
4 file an amended complaint.

5 If that option is still open to us, we would be
6 prepared to avail ourselves to it and to specifically plead
7 those matters that are in the memorandum of law and the
8 amended complaint.

9 THE COURT: Okay. Does that mean that you're also
10 withdrawing your motion for a default judgment?

11 MR. McCOLLOUGH: I think that that would have to be
12 the case if we were going to proceed on an amended complaint.

13 THE COURT: Okay. Well, then why don't we address
14 some of the other points that I was going to raise because I
15 think then you can address them in your amended complaint or
16 in your subsequent service of process.

17 Now the jurisdictional question we've just covered.
18 Same thing with venue. And it is unclear to me, and if I've
19 missed it, certainly by all means let me know.

20 It is not entirely clear where the event in this
21 complaint took place. You've talked about where the plaintiff
22 is incorporated and you've talked about where the defendant
23 resides, but the actual activities where did they occur?

24 MR. McCOLLOUGH: Well, I think if I could back up a
25 moment and give you some more information about the defendants

1 and the plaintiff that might -- I think that would help frame
2 this.

3 So the defendant is a U.S. citizen from Nebraska who
4 studied in Nebraska, was a professor at Columbia and then was
5 appointed as a professor in Oxford, England.

6 He was also -- which is relevant to this discussion,
7 was between 2003 and 2007 a professor at the University of
8 Michigan.

9 So between 2010 and 2011 the defendant was a
10 consultant to Hobby Lobby as an independent contractor for two
11 years between September, 2011 and August, 2012.

12 During that time six of the seven purchase
13 transactions happened. So while the defendant was a
14 consultant to Hobby Lobby, he was also pitching and selling
15 them objects that he represented were from his collection and
16 other private collections.

17 In August, 2012 then the defendant became a
18 consultant to the Museum of the Bible, which was created in
19 August, 2012 and then thereafter served as the consulting arm
20 of Hobby Lobby's acquisitions. So Hobby Lobby was building a
21 biblical antiquities collection that it would then donate to
22 the Museum of the Bible, which it did in 2017.

23 So the defendant was one of the earliest paid
24 consultants on the project between September, 2010 to '12 and
25 in '12 the defendant becomes a consultant to the museum.

1 The seven purchases were conducted during the
2 consultancy. The consultancy was between the defendant and
3 Hobby Lobby and there was travel between the U.K. and Oklahoma
4 City where the plaintiff is domiciled.

5 So the activities were in the U.K., in Oklahoma
6 City, where the meetings happened and then the sales were done
7 on contracts drafted by Hobby Lobby under Oklahoma law that
8 were executed -- I think they were executed by email. and then
9 the defendant was traveling and sending the property -- the
10 sales property to the United States we believe through the
11 Eastern District or partly through the Eastern District,
12 through JFK. So --

13 THE COURT: Is that stated in the complaint?

14 MR. MCCOLLOUGH: This information is not in the
15 complaint.

16 THE COURT: All right. Because what you say for
17 venue is that it's proper because he doesn't reside in the
18 United States. You've then given me a rather lengthy
19 explanation and then at the end said and it happened through
20 the Eastern District of New York.

21 So, again, I think because you have indicated, based
22 on Mr. Uchima's statements, that you are planning to withdraw
23 your motion and amend the complaint, I am raising these as
24 things that you may want to address in your amended complaint.

25 MR. MCCOLLOUGH: Yes, Your Honor. Yes, I will do

1 that.

2 THE COURT: All right. Then the next thing is --
3 okay. The service issue.

4 So perhaps that less so about amending the complaint
5 and just confirming -- and I think you provided additional
6 information in your pleadings, but understanding that the
7 defendant is located in the U.K. and that the -- I believe the
8 -- I think that your affidavit needs to make clear that the
9 methods of service are, in fact, compliant with either the
10 Hague Convention or U.K. law.

11 MR. McCOLLOUGH: We can do that. They are.

12 THE COURT: Okay. But you need to tell me why or
13 say in your papers why, but go ahead. Yes.

14 MR. McCOLLOUGH: Your Honor, you mean by affidavit
15 the affidavit that accompanies the motion for default?

16 THE COURT: Yes.

17 MR. McCOLLOUGH: Okay. So that will be after the
18 amended complaint and the -- I guess the -- well, it would be
19 --

20 THE COURT: (Indiscernible) complaint.

21 MR. McCOLLOUGH: Yeah, that would be a re-service
22 this time of the amended complaint anyway? Yeah. Okay.

23 THE COURT: Correct. And then the final thing is
24 the particularity requirement.

25 So the Rule 9(d) particularity -- actually, I

1 shouldn't say finally. But you allege fraud here and when
2 you're alleging fraud the general principle is that you're
3 alleging the who, what, when and where, right? Who made the
4 false statement? What was the nature of the false statement?
5 Those have to be plead with particularity.

6 And again, I'm -- you indicated in your motion that
7 -- let's see. You stated in paragraph 15 of your complaint
8 that the defendant was selling -- it is papyri? Am I saying
9 that correctly.

10 MR. MCCOLLOUGH: Papyri, yes.

11 THE COURT: Papyri. Even better. Papyri.

12 Okay. For each of the purchases Obbink represented
13 the Hobby Lobby that he was selling papyri that came from
14 private collectors. Okay.

15 And these are all in these private sale agreements.
16 Okay. Well, what were the statements that he made? How did
17 he make them? Did he say them? Was it in an email? Was it
18 an affirmation in the signature line of the sale agreements?

19 With particularity, who said it, when did they say
20 it, where did they say it, how did they say it? And I believe
21 that I -- well, I didn't include a case in my order, but that
22 case was related to something else. But there's ample case law
23 about this.

24 And then the fifth point was pleading parallel fraud
25 and breach of contract claims. So -- I see. You did fix this

1 one. Okay. I think you did cover this one. My apologies.
2 Right. You've clarified that this is regarding the 2018
3 agreement.

4 MR. MCCOLLOUGH: Yes.

5 THE COURT: Okay. That's fine. All right.

6 So with all of that what I'm going to do is because
7 this was referred to me on an R and R I can write a very
8 short, electronic order that states that -- you know, as
9 stated on the record at today's conference the parties
10 indicated that they intend to withdraw their motion and amend
11 the complaint and given the liberal pleading standards for
12 amending complaints I'm going to recommend that they be given
13 leave to amended the complaint.

14 So I think from there Judge Kovner will likely see
15 that and will likely gavel the motion as moot because you've
16 indicated that you're withdrawing it. And that would be both
17 your original motion and then your memorandum of law because
18 you filed the two separate motions.

19 So once you've amended and completed service and
20 refiled all of the above then your motion for default judgment
21 is going to very carefully follow the dictates of Local Rule
22 7.1, correct?

23 MR. MCCOLLOUGH: Yes.

24 THE COURT: Okay. Including the clerk's -- well,
25 you're going to have to request an entry of default because

1 it's going to be on the amended complaint, as well as --

2 MR. MCCOLLOUGH: Right.

3 THE COURT: Right. The clerk's certificate, the
4 complaint -- the amended complaint, excuse me, your memorandum
5 of law in support of a motion for default judgment. Any
6 affidavits that you're submitting to support that motion,
7 which affidavits are not pleadings that should be in the
8 complaint, but any other facts.

9 And then Judge Kovner may take the same route and
10 refer it to me, in which case we may be having this
11 conversation again or she may decide to rule on it herself.

12 Any questions about any of that?

13 MR. MCCOLLOUGH: Yes. We'll await Judge Kovner's
14 order granting us leave to amend and then we will follow up
15 with an amended complaint, I guess is the procedure.

16 THE COURT: Okay.

17 MR. MCCOLLOUGH: Yeah.

18 THE COURT: All right. Okay.

19 One more other thing, since this is something that I
20 would have asked about if you were proceeding with your
21 current motion.

22 Your complaint says that you're seeking reasonable
23 attorney's fees and costs. Your motion did not make clear
24 whether or not you were still seeking that and if you were
25 intending to seek attorney's fees and costs, then you would

1 need to submit attorney billing records and any documents that
2 support your request for costs.

3 MR. MCCOLLOUGH: Right.

4 MR. UCHIMA: Okay.

5 THE COURT: All right.

6 MR. MCCOLLOUGH: Okay. Thank you very much, Your
7 Honor.

8 THE COURT: Okay. All right. Thank you both very
9 much. If there is nothing else, then we are adjourned and I
10 wish you and your families continued good health and safety
11 and have a great holiday weekend.

12 MR. MCCOLLOUGH: Thank you, Your Honor.

13 MR. UCHIMA: Thank you, Your Honor. Thank you.

14 THE COURT: Thank you. Bye-bye.

15 (Proceedings concluded at 4:27 p.m.)

16 I, CHRISTINE FIORE, court-approved transcriber and
17 certified electronic reporter and transcriber, certify that
18 the foregoing is a correct transcript from the official
19 electronic sound recording of the proceedings in the above-
20 entitled matter.

21
22 

23 _____ July 12, 2022

24 Christine Fiore, CERT-410

25 Transcriber